

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

BECKY CLEMENTS,

Plaintiff,

vs.

COMPREHENSIVE SECURITY
SERVICES, INC., a Montana registered
foreign corporation; FIRSTLINE
TRANSPORTATION SECURITY, INC., a
Montana registered foreign corporation
GARY SMEDILE, individually; TERESA
BULLINGTON, individually; ZOE
HAUSER, individually;
TRANSPORTATION SECURITY
ADMINISTRATION; HOMELAND
SECURITY ADMINISTRATION;
TRINITY TECHNOLOGY GROUP, INC.,
a Montana registered foreign corporation;
ABC Corporation, ABC LLCs, and JOHN
DOES 1-10,

Defendants.

CV-19-45-BU-BMM

**ORDER ADOPTING JUDGE
DeSOTO'S FINDINGS
AND RECOMMENDATIONS**

Plaintiff Becky Clements filed a Complaint (Doc. 19) alleging federal constitutional claims and a state law claim for blacklisting against her former employer, FirstLine Transportation Security, Inc. ("Firstline"), three FirstLine employees ("individual defendants"), and various other defendants. FirstLine filed a Motion for Judgment on the Pleadings under Fed. R. Civ. P. 12(c). Doc. 29. The

individual defendants filed a Motion to Dismiss for Failure to State a Claim under Fed. R. Civ. P. 12(b)(1) and, alternatively, for lack of subject matter jurisdiction under Rule 12(b)(6) and (1). Doc. 60. United States Magistrate Judge Kathleen L. DeSoto held a hearing on these motions on October 30, 2020. Doc. 70.

Judge DeSoto entered Findings and Recommendations in this matter on November 5, 2020. Doc. 71. Neither party filed objections. When the parties do not file objections, the Court need not review *de novo* the proposed Findings and Recommendations. *Thomas v. Arn*, 474 U.S. 140, 150-51 (1986). The Court will review Judge DeSoto's Findings and Recommendations (Doc. 71) for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

Judge DeSoto recommended the following: (1) Clements's oral motion to dismiss TSA and the Department of Homeland Security be granted; (2) FirstLine's Motion for Judgment on the Pleadings (Doc. 29) as to Counts I-III (federal constitutional claims) be granted; (3) the individual defendants' Motion to Dismiss Clements's Counts I-III (federal constitutional claims) be granted; (4) the individual defendants' Motion to Dismiss Clements's Count IV (blacklisting) under Fed. R. Civ. P. 12(b)(6) be denied but their alternative Motion to Dismiss Clements's Count IV (backlisting) for lack of jurisdiction under Fed. R. Civ. P. 12(b)(1) be granted; and, (5) the matter be remanded to state court. Doc. 71.

The Court finds no clear error in Judge DeSoto's proposed Findings and Recommendations. Clements's federal constitutional claims fail as a matter of law because they do not fall within the categories of claims previously recognized under *Bivens* and there exists no basis for recognizing a new implied cause of action. Clements's blacklisting claim proves sufficient to survive the defendants' motions to dismiss. Without Clements's federal constitutional claims, the Court lacks jurisdiction to hear this case. Clements would be barred by the statute of limitations from bringing the remaining blacklisting claim again in state court. As a result, the Court will remand the remaining blacklisting claim to state court rather than dismissing the claim.

ORDER

Accordingly, **IT IS ORDERED** that:

1. Plaintiff's oral motion to dismiss TSA and the Department of Homeland Security as parties in this matter is **GRANTED**.
 - The Transportation Security Administration is **DISMISSED**.
 - The Department of Homeland Security is **DISMISSED**.
2. FirstLine's Motion for Judgment on the Pleadings (Doc. 29) is **GRANTED** as it relates to Counts I-III of the Amended Complaint (Doc. 19).
 - Counts I-III of the Amended Complaint (Doc. 19) are **DISMISSED** with prejudice.

3. The individual defendants' Motion to Dismiss for failure to state a claim (Doc. 60) is **GRANTED** as it relates to Counts I-III of the Amended Complaint (Doc. 19) and **DENIED** as it relates to Counts IV of the Amended Complaint (Doc. 19).

- Counts I-III of the Amended Complaint (Doc. 19) are **DISMISSED** with prejudice.

4. The individual defendants' Motion to Dismiss for lack of jurisdiction (Doc. 60) is **GRANTED** as it relates to Count IV of the Amended Complaint (Doc. 19).

- Count IV of the Amended Complaint (Doc. 19) is **DISMISSED** without prejudice.

5. All deadlines and hearings in this case are VACATED. The matter is remanded back to Montana's Eighteenth Judicial District Court, Gallatin County, Montana.

Dated the 19th day of November, 2020.



Brian Morris, Chief District Judge
United States District Court